IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.63 OF 2004.

Dashrath Sukhdev Awatade. ... Applicant.

Versus.

Mainabai Dashrath Awatade & anr. ... Respondents.

Shri S.V.Kotwal for the Applicant.

Shri V.V.Purvant for the Respondents Nos.1 & 2.

Shri K.V.Saste, A.P.P. for State.

CORAM : ABHAY S. OKA, J.

DATED : 20th July, 2005.

P.C.:

1. Heard the learned Counsel for the Applicant and the learned A.P.P. for the Respodnent No.3. Shri Purwant for the Respondent No.1 and 2 is also heard.

2. The Applicant has deposited a sum of Rs.10,000/- in the trial Court on 10th June 2005. A Zerox copy of the receipt is tendered on record. Apart from the said amount, a sum of Rs.3,000/- has been directly paid by the Applicant to the Respondent No.1. It is also not in dispute that a sum of Rs.6,000/- has been deposited by the Applicant in the trial Court.

3. The challenge in this petition is to the Judgment and Order dated 6th May 2003 passed by the learned Adhoc Additional Sessions Judge, Solapur by which the Revision Application preferred by the Respondent No.1 was

allowed. The Application made by the Respondent No.1 before the learned Judicial Magistrate First Class under section 125 of the Code of Criminal Procedure, 1973 was rejected. The Respondent No.1 had preferred a Revision Application for challenging the order of rejection. While allowing the Revision Application the Applicant was directed to pay monthly maintenance of Rs.600/- in favour of the Respondent No.2, who is the son of the Applicant.

4. The grievance of the learned Counsel for the Applicant is that Applicant's Advocate remained absent at the time of hearing of the Revision Application and therefore, the Applicant was not heard. The learned Advocate for the Applicant submitted that an opportunity may be given to the Applicant to appear before the Sessions Court and to oppose the Revision Application filed by the Respondents Nos.1 and 2. The learned Advocate for the Respondent Nos.1 and 2 has opposed the prayer.

4. The Applicant had engaged services of an Advocate. The learned Additional Sessions Judge has noted in the impugned Judgment and order that the Advocate was absent. Once the Applicant engaged the services of an Advocate it was not necessary for him to attend the proceedings of the Revision unless specifically called upon to do so by the Revisional Court. The Applicant

cannot be allowed to suffer for the default on the part of his Advocate. The Applicant has deposited a sum of Rs.10,000/- in the trial Court as directed by this Court. Hence the impugned Judgment and order deserves to be quashed and set aside.

5. Hence the following order is passed:

(i) The impugned Judgment and Order dated 6th May 2003 is quashed and set aside and the Criminal Revision Application No.83 of 2002 is restored.

(ii) The parties are directed to appear before the learned Sessions Judge, Solapur, on 16th August 2005 at 11.00 a.m. It is made clear that none of the parties will be served with the fresh notice of the Revision Application. The learned Sessions Judge will either decide the matter himself or will assign the Revision Application to any other learned Judge.

(iii) The Revision Application shall be decided as expeditiously as possible and preferably on or before 31st March 2006.

(iv) The Respondent No.1 will be entitled to withdraw the sum of Rs.10,000/- deposited by the Applicant in the trial Court. The Respondent No.1 will withdraw the said amount on behalf of the Respondent No.2.

(v) If the sum of Rs.6,000/- earlier deposited by the Applicant is not withdrawn by the Respondent No.1, she will be entitled to do so immediately.

(vi) All questions on merits are kept open.

(v) Revision Application is disposed of in the above terms.

(vi) The parties and the concerned Court to act on an authenticated copy of this order.

Judge.